

HOUSE BILL REPORT

ESHB 2828

As Amended by the Senate

Title: An act relating to personal wireless service facilities.

Brief Description: Regulating wireless telephone services.

Sponsors: By House Committee on Energy & Utilities (originally sponsored by Representative Crouse).

Brief History:

Committee Activity:

Energy & Utilities: 1/30/96, 1/31/96 [DP];

Appropriations: 2/3/96 [DPS].

Floor Activity:

Passed House: 2/9/96, 97-0.

Senate Amended.

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: Do pass. Signed by 7 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Patterson, Ranking Minority Member; Poulsen, Assistant Ranking Minority Member; Kessler and Mitchell.

Staff: Margaret Allen (786-7110).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Huff, Chairman; Clements, Vice Chairman; Pelesky, Vice Chairman; H. Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dellwo; Dyer; Foreman; Grant; Hargrove; Hickel; Kessler; Lambert; Linville; McMorris; Poulsen; Reams; Rust; Sehlin; Sheahan; Talcott and Wolfe.

Staff: Beth Redfield (786-7130).

Background: The wireless industry reportedly signs up 28,000 new customers daily and, as of February 1995, had a 10-percent market penetration. As the demand for cellular services has increased, the need for additional, smaller cell sites has increased correspondingly.

Small, numerous cell sites help the cellular industry address two major concerns: (1) capacity (more users wanting to use a cellular system at a given time than the system can accommodate); and (2) coverage (providing coverage in all areas and preventing "dropped calls" because cell sites do not overlap). The emerging microcell technology potentially will use several small microcells to replace and provide greater capacity than a single cellular tower.

A cell site consists of radio transmitters, receivers, and antennas. Most cell sites are created by placing antennas on existing structures. Other sites are created by placing antennas on cellular towers or monopoles. The receivers and transmitters usually are housed in small equipment shelters or rooms. The transmitters operate at low power levels and transmit ultra-high frequency radio waves. A cell site connects with other facilities by transmitting radio waves to a mobile switching office, which routes calls to the intended destinations.

The specific locations chosen by wireless companies to site antennas depend on a variety of factors, such as the proximity of adjacent cell sites, engineering and topographical considerations, community response, and the existence of a willing property owner. Antenna siting is often contentious, in large part due to neighborhood concerns about possible health, safety, and aesthetic effects.

Some persons have suggested siting only microcells in residential areas or near schools, in the belief exposure to radiofrequency electromagnetic radiation is lower near microcells than near other cellular antennas. Few citizens have expressed concern about the siting of antennas in nonresidential areas away from schools. Some citizens are frustrated with the difficulty of locating and interpreting reports of studies concerning the health or behavioral effects of exposure to radiofrequency radiation.

Current Regulatory Structure

Each cell site is subject to State Environmental Policy Act (SEPA) review, land use laws and ordinances, and state building and barrier-free access codes.

Each cell site also is subject to the federal Americans with Disabilities Act or "ADA." Current state barrier-free access regulations have been certified as meeting ADA requirements.

Wireless service providers would like unstaffed cell site equipment shelters to be exempt from state building insulation and barrier-free access requirements.

Summary of Bill: "Personal wireless services" and "personal wireless service facilities" are defined using federal definitions. "Microcell" is defined as a wireless communications facility consisting of an antenna that is either (i) four feet in height and with an area of not more than 580 square inches, or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length.

The siting of personal wireless service antennas is exempted from SEPA requirements if the antennas to be sited (1) are microcells to be attached to an existing structure that is not a residence or school and does not contain a residence or school; (2) are other antennas to be attached to an existing structure (that may be an existing tower) that is not a residence or school and does not contain a residence or school, and that is not located in a residential zone; or (3) involve constructing a cellular tower shorter than 60 feet in height that is not located in a residential zone. In addition, the project must not be in a designated environmentally sensitive area, and must not consist of a series of actions some of which are not categorically exempt from SEPA requirements, or that together may have a significant adverse environmental impact.

The siting of such antennas is still subject to the local land-use permitting process.

When a telecommunications service provider applies to site several microcells in a single geographical area, local governments are encouraged to (1) allow the applicant to file a single set of SEPA documents, if applicable, and a single set of land use permit documents, that will apply to all the microcells to be sited; and (2) render decisions in a single administrative proceeding.

The Department of Ecology is directed to adopt rules that create a categorical exemption from SEPA for the siting of personal wireless service facilities meeting specified conditions.

The State Building Code Council is directed to exempt equipment shelters from state building envelope insulation requirements. Also, the council is directed to amend its rules concerning barrier-free access requirements to the extent practicable while still maintaining the certification of those rules under the ADA, provided the shelters are unstaffed, are not attached to structures subject to barrier-free access requirements, and if employees who visit the shelters for maintenance activities must be able to climb.

When funds are appropriated for that purpose, the Department of Health is directed to survey scientific literature regarding possible adverse effects of human exposure to the radiofrequency part of the electromagnetic spectrum. The department must report the survey results to the Legislature, prepare a summary of that survey, and make the summary available to the public. The department is to update the survey and summary periodically.

EFFECT OF SENATE AMENDMENT(S): The Senate amendments add the following legislative findings: (1) concerns have been raised over possible health effects from exposure to some wireless telecommunications facilities; (2) exposures from these facilities should be kept as low as reasonably achievable while still allowing the operation of these networks; and (3) DOH should be the state agency that follows the issues and compiles information about potential health effects from wireless telecommunications facilities.

Unless preempted by federal law, the amendments also authorize DOH to require (in residential zones or areas) personal wireless service companies to provide random power density test results showing radiofrequency levels before and after the siting of antenna facilities other than microcells.

The amendments include an appropriation of \$49,500 to DOH to survey scientific literature regarding possible adverse effects of human exposure to the radiofrequency part of the electromagnetic spectrum, report the survey results to the Legislature, prepare a summary of that survey, make the summary available to the public, and update the survey and summary periodically. (As it passed the House, ESHB 2828 required DOH to perform these duties when funds were appropriated for that purpose, but did not include an appropriation.)

Finally, the amendments allow an otherwise qualified shelter, or a room or enclosure serving as an equipment shelter, to be exempt from state barrier-free access requirements, even if the shelter, room, or enclosure is attached to or part of a structure that is subject to barrier-free access requirements.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Energy & Utilities) Over 400 wireless facilities are sited in Washington State; each received a determination of nonsignificance under SEPA review. SEPA review is not the proper place for addressing citizens' concerns about the siting of wireless antennas. Microcells need to be defined, language made consistent, and the applicability of the SEPA exemption clarified. The intent of the wireless industry is to make antennas as unobtrusive on the landscape as possible. Current insulation requirements for equipment shelters are nonsensical, as the equipment must be cooled, not kept warm. Also, current barrier-free access requirements are impractical, as the shelters are unstaffed, and employees must be able to climb to service the equipment in the shelters. ANSI standards are widely accepted and provide a significant margin of safety. A literature review by the Department of Health will be beneficial, as citizens tend to distrust information

provided by wireless service providers. The bill should be amended explicitly to limit the review to the radiofrequency spectrum.

(Appropriations) The substitute bill reflects the passage of new federal telecommunications legislation. The legislation will help the wireless industry. There is no conclusive evidence that there is a negative caused by electromagnetic radiation.

Testimony Against: (Energy & Utilities) The body of scientific literature regarding the effects of human exposure to radiofrequency radiation is fragmented, and deals mostly with acute exposure. Unnecessary exposure to radiofrequency electromagnetic radiation should be minimized. ANSI standards protect from thermal, not nonthermal, effects. Also, ANSI standards assume no segment of the population is more susceptible than others to the effects of exposure to radiofrequency radiation; ask the Department of Health to address these issues. Modulated radiofrequency radiation can have the same effect as low frequency electromagnetic radiation. Different parts of the body are affected differently. Ask the Department of Health to report on studies at levels below the ANSI standards regarding what is safe for animals. There is a need to determine what people are already being exposed to in the way of radiation. Ask state agencies and universities about satellites, and what radiation will not penetrate the brain. Employ ground fiber-optic links rather than additional cell sites; promote the use of digital technology so fewer cell towers are necessary. Local governments are trying to streamline the SEPA process. This bill may set a precedent in creating SEPA exemptions when the SEPA process itself needs to be addressed.

(Appropriations) None.

Testified: (Energy & Utilities) (Pro) Representative Crouse, prime sponsor; Ross Baker, AT&T Wireless; Ron Smith, U.S. West; Dr. Bill Guy, University of Washington; Chris Van Gorkom, Department of Health; and Randi Hilleso, Sprint and VCI. (Con) Scott Merriman, Washington Environmental Council; and David Fichtenberg, ACTION. (With Concerns) Victoria Lincoln, Association of Washington Cities; Doug Levy, City of Everett; and Bennie Barnes and Matt Lampe, City of Seattle.

(Appropriations) Representative Larry Crouse, prime sponsor; and Steve Gano, AT&T Wireless.